

06/15/2007

Linda



**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SDMS Document ID



1059628

Ref: 8ENF-RC

June 15, 2007

Mr. Ed Thamke, Bureau Chief
Waste & Underground Tank Management Bureau
Montana Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Re: ASARCO East Helena Facility, Request for
Documents Associated with Consent Decree,
May 7, 2007, Letter

Ed
Dear Mr. Thamke:

Thank you for the above referenced letter in which you requested that EPA direct ASARCO to resume provision of copies of corrective action documents associated with our Federal Consent Decree, 98-3-H-CCL, with ASARCO, directly to the State. My apologies for the tardiness of our response. Both Ms. Jacobson and I were out of the office for much of May. We appreciate the positions stated in your letter and agree that providing MDEQ copies will allow for preservation of records in a location readily accessible to the citizens of Helena and East Helena, allow you to continue to support the State's Natural Resource Damage claim, and offer your staff the opportunity for State review and comment on important corrective action milestone documents.

First, let me express our appreciation for the support provided by the State in review and oversight of the corrective action activities. We commend you for the high caliber of technical comments provided by your staff. We do not feel, however, that our providing your staff courtesy copies will unduly burden or delay the review process. As we have done historically, we commit that we will not finalize our comments until we have ensured that the State has had a reasonable opportunity to review and offer input. Additionally, as requested, the State will be provided direct notice of the start of all public comment opportunities.

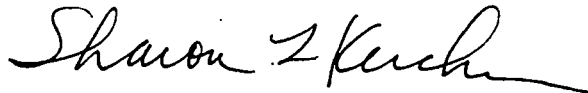
As your letter stated, provision of these documents has allowed you to facilitate the Montana Department of Justice's Natural Resource Damage claim process. Due to recent events, EPA is now fully aware that we need to continue to ensure that the activities being conducted in connection with the State's NRD claim and ASARCO's implementation of the federal RCRA consent decree are completely separate. Because we do not wish to inadvertently create any

appearance issues where there are no actual issues, we have concluded that it is best if ASARCO continues to send documents to us. As noted above, we remain committed to forwarding them on to you as quickly as possible.

Regarding the demolition of the blast furnace flue and monier flue as an EPA-lead Interim Measure, please allow me to clarify. Prior to EPA's issuance of our March 29, 2007, letter in which submission of an Interim Measures Work Plan was required, Ms. Jacobson secured the support of your staff. During a conference call with MDEQ on April 26, we clarified that the scope of this work, which requires soil characterization and excavation, more appropriately fell under the auspices of the federal RCRA corrective action work. My recollection of that call is that MDEQ and EPA agreed that we would have Asarco proceed with the Interim Measures Work Plan. I appreciate your offer to have your staff assist us with oversight of the demolition activities particularly given your geographic proximity to the Facility. Ms. Jacobson will coordinate on-site work with your staff.

Please contact me at (303) 312-6352 if you have questions on this or any related matter.

Sincerely,



Sharon L. Kercher, Director
Technical Enforcement Program

cc: Charles Figur, EPA-L
Julie DalSoglio, EPA
Linda Jacobson, EPA

